

## **REMARKS**

### **I. STATUS OF THE CLAIMS**

Claims 1-19 and 21 were pending in the present application prior to this Amendment. In the Final Office Action mailed February 26, 2008 all of these claims were rejected.

Claims 1, 10, 13, 17, and 19 are amended. Claims 5-7, 9, 11, 14, and 18 are canceled. Thus, claims 1-4, 8, 10, 12, 13, 15-17 19, and 21 remain pending.

### **II. 35 USC 102(a) vs. 102(e) REJECTION**

The Examiner is correct. 35 USC 102(a) is the appropriate section under which Schiffmann should have been applied. The undersigned stands corrected.

### **III. CLAIM REJECTIONS UNDER 35 U.S.C. § 112**

Claim 15 was rejected under 35 U.S.C. §112 because “said nailing flange” was considered to lack sufficient antecedent basis. The Examiner is correct. The word “flange” was inadvertently typed instead of “fin.” Claim 15 has now been amended to correct this typo.

### **IV. CLAIM REJECTIONS UNDER 35 U.S.C. §102/103**

Claims 1-19 and 21 were rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Young (U. S. Patent No. 6,125,605). Claims 5-7, 11, 14, and 18 have been cancelled. Remaining independent claims 1, 10, 15, and 19 have been amended. All of the pending claims are believed to be in condition for allowance in view of the following discussion.

Young discloses a rather traditional clad door frame having a wooden jamb 11 and a decorative wooden molding or casing 12 secured to it with nails 14. Both the jamb and the molding are covered or encased with a plastic cladding 20 that covers the exterior facing surfaces of the molding 12 and the jamb 11 in a close conforming manner. (see column 2, lines 33 – 53). As is stated by Young, clad door frames of this type are conventional.

Young also discloses a rather traditional nailing fin. The nailing fin is not labeled or discussed by Young; however, it is the thin plastic fin (perhaps best seen in Figs. 1 and 2) that is stapled with staples 30 to the back side of the molding and projects outwardly from the perimeter of the door frame. Oblong holes are provided in the nailing fin to receive nails that are driven into the underlying framing to attach the door frame to the building structure.

The novel feature of the Young door frame is the tiltable flap 32 that is hingably attached along the door opening defining edge (i.e. the inside edge) of the cladding 20 by means of a live hinge 36. The flap has an end 40 that can be snapped into a slot 42 and the flap can be opened away from the molding 12 to permit nails 14 to be driven through the underlying surface 38 to attach the molding 12 to the jamb 11. Afterwards, the open flap can be pushed by hand and pressed flat against the underlying surface 34, whereupon the end portion 40 snaps and lodges within the groove 42 to hold the flap in a closed position to conceal the unsightly fastener holes beneath from view. (See generally column 3, line 30 et seq. of Young). The flap 32 then becomes the permanently exposed face of the molding.

It is important to note that, other than the nail-hiding flap, Young discloses an “otherwise conventional” vinyl clad door frame with a separate nailing fin attached with staples. Because the nailing fin is separate and only attached with staples, the junction between the nailing fin and

the molding is leaky and not water tight. Rain water on the top of the molding (Fig. 2) thus will seep between the junction of the nailing flange and the molding ultimately to rot and otherwise deteriorate the underlying wood. To prevent this, head flashing is required and used to cover and seal this juncture against water infiltration when the door frame of Young is installed. As discussed in Applicant's specification, traditional flashing may include the installation of a strip of metal extending from behind the siding and over the top of the head jamb brick mold or a wood or plastic drip edge applied to the top of the brick mold. Young does not discuss the installation of his door, and, as a consequence, omits any discussion or teaching of the head flashing that would be installed *in addition to and covering* the plastic cladding on the molding 12 and the nailing fin. In short, Young is not concerned with and contains no teaching whatsoever of flashing his door frame during installation or of a head flashing of any configuration to be used for such flashing.

In contrast to the teachings of Young, Applicant's invention, as claimed in claim 1, is directed to a frame that includes flashing (claimed as a unitary plastic flashing member) of a type that might be used with a clad door frame such as that of Young to seal along the top of the molding. More specifically, claim 1 (as amended) recites a frame comprising a sill, a pair of spaced side jambs, a head jamb, and a *unitary* plastic flashing member attached to the head jamb. The flashing member is configured to define four components: (1) a flashing strip overlying and covering the upwardly facing top surface of the head jamb, (2) a nailing fin projecting upwardly from the flashing strip and away from the head jamb, (3) a drip edge to direct water away from the head jamb, and (4) a temporary construction cover secured to the drip edge with a tear-away connection. The construction cover depends from the drip edge to overlie and protect the head

jamb during construction. After construction, it is torn away along the tear-away connection and discarded to expose the head jamb.

Young does not anticipate or render obvious the invention of claim 1 for at least the reason that it does not disclose or fairly suggest all of the elements recited in claim 1. In fact, Young does not disclose a flashing member at all, but only a vinyl clad door frame with which an additional flashing member would be used during installation to prevent water leakage. One of skill in the art knows the terms of art and realizes that flashing and cladding are different things and that cladding is not flashing. Young simply does not disclose a flashing member as claimed.

Even if the mere presence of vinyl cladding on the door frame components of Young were considered to constitute a flashing member as the Office Action seems to suggest, the configuration of this cladding in Young still would fail to include or fairly suggest the frame as claimed in claim 1. First, the cladding and the nailing flange of Young are not *unitary* as claimed. Webster's defines *unitary* in this context as undivided or whole. Young teaches just the opposite of the claimed unitary structure; that is, that the nailing fin is a separate item attached to the back of the molding with staples 30. Contrary to the position taken in the Office Action, Young's structure is distinctly separate, divided, and not whole and thus not unitary. This is not merely a semantic distinction without a practical difference. The claimed unitary nature of Applicant's flashing member is the very thing that would form a water impervious dam where the nailing fin and the molding of Young meet to prevent water leakage at this junction. In fact, since the claimed invention includes the nailing fin as part of the unitary flashing member, the separate stapled-on fin of Young would be eliminated as redundant. In stark contrast, the junction between the non-unitary separate nailing fin of Young and the cladding

cannot form a dam and actually promotes the very water leakage that necessitates a flashing member in the first place.

Claim 1 recites that the unitary flashing member also forms a drip edge. Contrary to assertions in the Office Action, Young does not teach a drip edge. What is identified as a “drip edge” in the Office Action is nothing more than part of a decorative profile milled in the molding. Nowhere does Young actually teach that this is a drip edge (it is not referred to at all by Young) or that it performs the claimed function of directing water from the flashing strip *away from* the head jamb. An assertion that “B” from the drawing in the Office Action identifies a drip edge or that it performs the claimed function of a drip edge can be born only of impermissible hindsight gleaned from Applicant’s own disclosure. Water on the top of the molding in Young will simply spill over the top outer edge and run down the face of the molding. Drip edges are applied to door (and window) frames such as that of Young during installation to prevent this very problem by forcing the water to drip off of the drip edge and away from the molding rather than running down the face of the molding, and Applicant’s drip edge is formed as a part of a unique unitary flashing member as claimed. (see the drip edge 21 in Fig. 2 of Applicant’s invention). Young does not teach or fairly suggest the claimed drip edge or any drip edge.

Finally, claim 1, as amended, now incorporates subject matter previously recited in claims 5-7. Specifically, the claimed unitary flashing member further defines a temporary construction cover secured to the drip edge with a tear-away connection. The construction cover depends (which Webster’s defines as to hang down) from the drip edge and is sized to overlie and protect the head jamb during construction activities when the head jamb might otherwise be marred or damaged. After construction, the construction cover is torn away along its tear-away

connection to the drip edge and discarded to expose the previously covered and protected head jamb. The construction cover 39 and its tear-away connection 49 are perhaps best illustrated in Fig. 3, and Fig. 2 shows the construction cover performing its function of overlying and protecting the head jamb. Young does not teach or fairly teach any construction cover at all, much less one configured as claimed in claim 1. The vinyl cladding 20 of Young is the finished exposed surface of Young's molding and is not protected from damage in any way during construction. Young exemplifies the very problem addressed by the construction cover of Applicant's invention. There is no teaching in Young of any construction cover sized to overlie and protect this surface during construction. The Young molding is fully exposed during construction and subject to the very damage that Applicant's construction cover is intended to prevent.

The Office action suggests that the flap 32 of Young is a construction cover, that it is "removable," presumably because of the fact that it can hinge or swing down to allow nails to be driven through the molding, and that it is attached with a tear-away connection 42. Applicant respectfully submits that flap 32 is none of these things. However, in order to clarify the claimed invention, claim 1 now recites that the construction cover is "detachable" rather than removable. Further, claim 1, as amended, recites that the construction cover is secured to the drip edge with a tear-away connection, that it depends or hangs down from the drip edge, that it is sized to overlie and protect the head jamb during construction, and that it is torn away and discarded after construction. Young does not teach or fairly suggest the claimed construction cover. First, the flap 23 of Young simply is not a temporary construction cover. It is a permanent and exposed element of the clad molding; an element, in fact, in need of protection by a construction cover

such as that of claim 1. The flap 32 does not depend (hang down) from any drip edge as claimed. The flap 32 is not connected to the cladding with a tear-away connection as claimed, but rather with a "live hinge." It is not sized to cover and protect the molding. Finally, to suggest that the flap 32 is torn away and discarded after construction is diametrically opposed to the teachings of Young. The very purpose of the flap 32 is to cover permanently the unsightly nail holes 50 after the molding is nailed to the jamb. To tear it away and discarded it after construction would destroy this function as the nail holes would then be exposed. It cannot be obvious to do a thing, the result of which is to destroy the function of a prior art device.

In view of the forgoing, Applicant submits that Young fails to disclose or fairly suggest all of the elements recited in claim 1 and thus fails to anticipate the claim. For at least this same reason, Young cannot render claim 1 obvious. It would not be obvious to a skilled artisan to modify Young to reach the claimed invention. First, Young does not teach a flashing member. It merely teaches a clad door frame in need of a flashing member when it is installed. Further, a suggestion that it would be obvious to modify Young to include the claimed drip edge, or the unitary nailing fin, or the detachable construction cover depending from the drip edge as claimed could only result from the improper application hindsight gleaned from Applicant's own disclosure. For at least these reasons, and in view of the forgoing discussion, claim 1 is allowable over Young.

Claims 2, 3, 4, and 8 depend from claim 1 and thus are allowable for at least the same reasons that claim 1 is allowable.

Independent claim 10 recites a door assembly with a threshold, vertical jambs, a head jamb, and brick mold extending along the vertical jambs and the head jamb. A unitary plastic

flashing member is attached to the brick mold along the head jamb. The flashing member defines both a permanently attached flashing strip that overlies a top surface of the brick mold and a detachable construction cover secured to the flashing strip with a tear-away connection. The construction cover depends (hangs down) from the flashing strip to overlie an outside face of the brick mold to protect it from damage until the construction cover is torn away along the tear-away connection and discarded to expose the outside face. Young fails to anticipate or render obvious claim 10 for reasons discussed in detail above relative to claim 1. More specifically, Young does not teach or fairly suggest a flashing member and, in fact, will need a flashing member when installed. Further, Young does not teach or fairly suggest a construction cover but instead discloses a door frame with a clad surface that is not covered but fully exposed to damage during construction. Even if the flap 32 of Young were considered a "construction cover" (it is not), it is not secured to a flashing strip with a tear-away connection as claimed, does not depend from the flashing strip as claimed, and to tear away and discard the flap 32 as claimed would destroy its very function of hiding the nail holes beneath. For at least these reasons, claim 10, as amended, is allowable over Young.

Claims 12, 13, 15, 16, and 17 depend from amended claim 10 and thus also are allowable over Young for at least the same reasons that claim 10 is allowable.

Independent claim 19 also recites a frame for a door or window with a plastic flashing member having a flashing strip that overlies an upper top surface of the brick mold and a detachable construction cover secured to and depending from the flashing strip and sized to overlie and protect an otherwise exposed surface of the brick mold and that is detached and discarded after construction. As discussed in detail above, Young fails to teach or fairly suggest

the claimed combination and therefore claim 19 is allowable over Young.

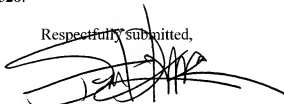
Claim 21 depends from claim 19 and therefore also is allowable.

### CONCLUSION

In view of the foregoing remarks, the rejection of the claims as set forth in the Final Office Action of February 26, 2008 has been addressed and overcome. Applicant further submits that all pending claims (claims 1-4, 8, 10, 12, 13, 15-17 19, and 21) are in condition for allowance and earnestly requests that a Notice of Allowance be issued. If issues may be resolved through Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney at (404) 962-7524 is earnestly solicited.

The Commissioner is hereby authorized to charge any fees due, or credit any overpayment, to Deposit Account No. **09-0528**.

Respectfully submitted,



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